

Judge Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

The UNITED STATES of AMERICA,)
Plaintiff,) No. CR08-105JLR
v.) GOVERNMENT'S SENTENCING
JOSE MANUEL NUNEZ-MALDONADO,) MEMORANDUM
a/k/a Primitivo,)
Defendant.)

A. Introduction

The United States of America, by Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, Lisca Borichewski, Assistant United States Attorney, files this sentencing memorandum.

B. Factual Background

The government has no objections or corrections to the factual summary contained in the Presentence Report of the United States Probation Office.

Federal agents and state law enforcement officers arrested the defendant during a lengthy investigation into individuals trafficking in methamphetamine in the Western District of Washington. As part of the investigation, law enforcement obtained court approval to intercept the communications over 12 telephones. During the course of interception, the defendant was identified as using the moniker “Primitivo,” and using Target Telephone No. 8. *See* Government’s Exhibit #1 - Interception Chart.

1 The intercepted calls revealed that the defendant was communicating with
 2 individuals in Mexico to facilitate the transportation of methamphetamine to the Western
 3 District of Washington for further distribution. *See* Government's Exhibit #2 - Summary
 4 of Pertinent Events.

5 On March 6, 2008, based on the intercepted calls, agents were able to stop a
 6 vehicle leaving the defendant's residence after delivering 10 pounds of methamphetamine
 7 to the defendant. Upon searching the vehicle, agents recovered \$257,420 in currency
 8 from a hidden compartment, which was payment for the methamphetamine.

9 On March 28, 2008, agents used the assistance of a confidential source (CS1) to
 10 purchase 1/4 methamphetamine from the defendant. After the sale, agents executed a
 11 search warrant at the defendant's residence and seized an additional \$266,860 in
 12 currency, a scale, packaging material, one .40 caliber semi-automatic pistol, one pump
 13 action shotgun, and one .22 caliber rifle.

14 **C. Sentencing Guidelines Calculations**

15 The government agrees with the sentencing guideline calculations of the United
 16 States Probation Office which include a total base offense level of **33**, a criminal history
 17 category **I**, and a standard range sentence of **135 to 168 months**.

18 **D. Reccomendation**

19 The factors to be considered before imposing sentence include the advisory
 20 guideline range and:

21 the nature and circumstances of the offense and the history and
 22 characteristics of the defendant; the need for the sentence imposed . . . to
 23 reflect the seriousness of the offense, to promote respect for the law, . . . to
 24 provide just punishment for the offense, to deter, to protect the public, and
 25 to provide rehabilitation; the kinds of sentences available; the need to avoid
 sentencing disparities; and the need to provide victims with restitution.

United States v. Zavala, 443 F.3d 1165, 1186, citing 18 U.S.C. 3553(a)(1), (2), (3), (6),
 (7) (quotations omitted).

26 As part of the stipulated terms of the plea agreement, the parties agreed to a drug
 27 quantity reflecting only 10 pounds of methamphetamine delivered to the defendant on
 28 March 5, 2008. The intercepted calls and additional currency seized from the defendant's

1 residence reflect that the defendant engaged in the distribution of substantially greater
2 quantities of methamphetamine. Additionally, as part of the stipulated terms of the plea
3 agreement, the government agreed not to file charges of Possession of a Firearm in
4 Furtherance of a Drug Trafficking Offense, which would have added a mandatory
5 minimum term of five years in prison to the defendant's sentence for the drug offense. In
6 consideration the benefits already conferred on the defendant, and in recognition that he
7 possessed several firearms in conjunction with his drug trafficking activity, the
8 government believes a sentence within the standard range is both appropriate and
9 reasonable. As such, the government respectfully requests that this Court impose a
10 sentence of 135 months in custody, 5 years supervised release, and a \$100 special
11 assessment.

12 If this Court imposes a sentence, that is within or below the standard range, the
13 defendant has waived his right to appeal the sentence. United States v. Buchanan, 59
14 F.3d 914, 916 (9th Cir. 1995).

15 Dated this 16th day of October, 2008.

16 Respectfully submitted,

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18 United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2008 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Karen Wolgamuth
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